

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Garfield School District)	File No. SLD-187201
Garfield, New Jersey)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER**Adopted: October 15, 2001****Released: October 16, 2001**

By the Common Carrier Bureau, Accounting Policy Division:

1. The Accounting Policy Division (Division) has under consideration a Request for Waiver filed by Garfield School District (Garfield), Garfield, New Jersey.¹ Garfield seeks a waiver to allow consideration of its application as timely filed within the filing window established by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) for Funding Year 3 of the schools and libraries support mechanism. For the reasons that follow, we deny Garfield's Request for Waiver.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements

¹ Letter from Raymond Hryczyk, Garfield School District, to Federal Communications Commission, filed April 17, 2000 (Request for Waiver); *see also* Letter from Raymond Hryczyk, Garfield School District, to Schools and Libraries Division, Universal Service Administrative Company, filed March 27, 2000 (SLD Appeal).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. § 54.504 (b)(1), (b)(3).

for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁴ A commitment of support is contingent upon the filing of the applicant's FCC Form 471.⁵ Under our rules, SLD is authorized to establish and implement filing periods for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.⁶

3. The deadline for Funding Year 3 for FCC Forms 471 was 11:59 p.m. E.S.T. on January 19, 2000.⁷ The basis of Garfield's Waiver Request is that an overnight carrier failed to deliver Garfield's FCC Form 471 as it had guaranteed on January 19, 2000, delivering it the following day, which was the day after the filing window closed.⁸ Garfield provides documentation demonstrating that it provided its FCC Form 471 to an overnight courier, Airborne Express, on January 18, 2000.⁹ Garfield provides further evidence showing that the courier failed to deliver the application to SLD until 11:32 a.m. on January 20, 2000, the day after the filing window closed.¹⁰ Garfield requests a waiver of our rules governing the filing window, arguing that its failure to submit the FCC Form 471 resulted from the unexpected delay by the courier.¹¹

4. Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.¹² A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹³ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁴

5. After a thorough review of the record, we conclude that we do not need to reach the merits of its Waiver Request, because we find that Garfield violated program rules by using an incorrect form. Specifically, the record reflects that Garfield submitted a Funding Year 1 FCC

⁴ 47 C.F.R. § 54.504(c).

⁵ *Id.*

⁶ 47 C.F.R. § 54.507(c).

⁷ SLD website, What's New (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

⁸ Waiver Request.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹³ *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *see also WAIT Radio*, 418 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

Form 471 to request discounts for services in Funding Year 3.¹⁵ Because Garfield violated program rules, we deny Garfield's Waiver Request.

6. SLD must review and process thousands of applications each funding year. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.¹⁶ It is incumbent upon applicants to determine whether their applications are in compliance with program requirements prior to filing. Because applications may change from year to year, applicants bear the responsibility of determining whether or not the correct form is being used. Garfield should have determined that it was using the wrong application. The FCC Form 471 application and instructions are funding year specific,¹⁷ and each set of instructions provides item-by-item instructions to the corresponding form. Further, the instructions encourage applicants to reference the SLD website, to obtain guidance material from SLD's fax-on-demand service, or to contact SLD's Client Service Bureau for assistance with the application process.¹⁸ Specifically, the website instructions for completing FCC Form 471 for Year 3 provide that each form must be a "correct OMB-approved FCC Form 471, with a date of September 1999 in the lower right-hand corner."¹⁹

7. SLD received a number of applications that used the wrong form for Funding Year 3.²⁰ If we were to grant a waiver for using the wrong FCC Form 471, we would then have to grant similar relief to other entities that made similar mistakes, which would in turn increase administrative burdens for SLD. For Funding Year 3, SLD received over 36,000 applications. It is impractical, if not impossible, for SLD to review each application and notify applicants of errors just prior to the close of the filing window. Instead, the burden of ensuring that complete and accurate information is provided on the correct forms properly rests with applicants themselves. We therefore conclude that, under these circumstances, Garfield has failed to make a showing warranting relief and, therefore, its Waiver Request must be denied.

¹⁵ See FCC Form 471, Garfield School District, filed January 20, 2000; *Compare* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Year 3 Form 471) with Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1997) (Year 1 Form 471).

¹⁶ See generally Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

¹⁷ *Compare* Year 3 Form 471 with Year 1 471.

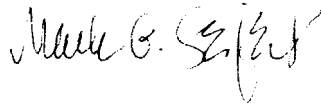
¹⁸ *Id.*

¹⁹ Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<<http://www.sl.universalservice.org/reference/471mps.asp>>>.

²⁰ See, e.g., *Request for Review by Fair Lawn Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. NEC.471.11.19.99.01100003, NEC.471.12-10-99.02300008, CC Docket Nos. 96-45 and 97-21, Order, DA 01-1504 (Com. Car. Bur. rel. June 27, 2001) (denying applicant's Waiver Request where applicant submitted a Funding Year 2 FCC Form 471 for Funding Year 3).

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed April 17, 2000 by Garfield School District, Garfield, New Jersey IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert, Deputy Chief
Accounting Policy Division
Common Carrier Bureau